Supreme Court, U. S.
FILED
MAY 28 1976
MICHAEL RODAK, JR., CLERK

In The Supreme Court

IN AND FOR THE

United States of America

No. 75-1717

THE BANKING BOARD OF THE STATE OF OKLAHOMA; CITIZENS SECURITY BANK, BIXBY, OKLAHOMA; RIVERSIDE NATIONAL BANK, JENKS, OKLAHOMA; ARKANSAS VALLEY STATE BANK, BROKEN ARROW, OKLAHOMA; and THE FIRST BANK OF HASKELL, OKLAHOMA

Petitioners,

vs.

L. C. NEEL, CURTIS G. HOLSTED, ROBERT H. HODGEN, ERNEST E. CROCKER and GAIL L. CARNES, Individually, and as Organizers of THE BANK OF BIXBY, (Proposed),

Respondents

PETITION FOR A WRIT OF CERTIORARI TO ~~THE SUPREME COURT OF THE UNITED STATES OF AMERICA~~

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INDEX

Page

I. OPINION 2

II. JURISDICTION 2

III. QUESTION PRESENTED: That the opinion of the Court of Bank Review reversing the Findings and Conclusions of the Banking Board of the State of Oklahoma was contrary to the established law of Oklahoma and deprived petitioners of their property without due process and denied them the equal protection of the law guaranteed under the Fourteenth Amendment. 3

IV. CONSTITUTIONAL PROVISIONS INVOLVED 4

V. STATEMENT OF FACTS 5

Brown v. Banking Board, Okl., 512 P.2d 166 (1973) 5

Village Bank v. Seikel, Okl., 503 P.2d 550 (1972) 5

VI. ARGUMENT: Certiorari should be granted in this cause because the rulings, judgments and opinions of the Court of Bank Review are not even remotely, much less "probably not", in accord with the decisions of this Court with respect to Fourteenth Amendment guarantees. 7

Armstrong v. Mauzo, et ux., 308 U.S. 545 14

Brinkerhoff-Farris Trust & Savings Co. v. Hill, 281 U.S. 673 14

Brown v. Board of Education, 347 U.S. 843 12

Kramer v. Union School District, 395 U.S. 621 12

Shapiro v. Thompson, 394 U.S. 618 12

Torasco v. Watkins, 67 U.S. 488 12

Page

Universal Camera Corp. v. N.L.R.B., (1951) 340 U.S. 474, 71 S.Ct. 456, 95 L.Ed. 456 12

Yellow Transit Co. v. State, Okl., 178 P.2d 83 ..... 10, 12

VII. CONCLUSION 15

Appendix

Appendix A: Order Denying Certiorari, Supreme Court of Okla., Oct. 28, 1975 17

Appendix B: Order Overruling State Banking Board and Directing Issuance of Charter, Court of Bank Review, State of Okla., June 7, 1975 18

Appendix C: Order, Before the Banking Board of the State of Oklahoma, March 14, 1972 23

Appendix D: Journal Entry of Judgment, Court of Bank Review, State of Okla., Dec. 16, 1972 25

Appendix E: Proceedings for Certiorari on Decision of Court of Bank Review, Supreme Court of the State of Okla. 28

Appendix F: Order Remanding to State Banking Board with Directions, Court of Bank Review, State of Okla., Jan. 4, 1975 33

Appendix G: Findings of Fact and Conclusions of Law, Before the Banking Board, State of Okla., Feb. 19, 1975 35

Appendix H: Order Denying Oral Argument and Rehearing, Supreme Court of Oklahoma, Jan. 13, 1976 40

Page

Appendix I: Motion to Stay, Supreme Court of Okla., Jan. 28, 1976 41

Appendix J: Response to Motion to Stay, Supreme Court of Okla., Feb. 1976 43

Appendix K: Motion to Reconsider, Supreme Court of Okla., Feb. 9, 1976 48

Appendix L: Motion to Vacate, Supreme Court of Okla., Feb. 24, 1976 51

Appendix M: Order, Supreme Court of Okla., Feb. 25, 1976 54

Appendix N: Order, Supreme Court of Okla., March 8, 1976 55

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IN AND FOR THE

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No.

THE BANKING BOARD OF THE STATE OF OKLAHOMA; CITIZENS SECURITY BANK, BIXBY, OKLAHOMA; RIVERSIDE NATIONAL BANK, JENKS, OKLAHOMA; ARKANSAS VALLEY STATE BANK, BROKEN ARROW, OKLAHOMA; and THE FIRST BANK OF HASKELL, OKLAHOMA

Petitioners,

vs.

L. C. NEEL, CURTIS G. HOLSTED, ROBERT H. HODGEN, ERNEST E. CROCKER and GAIL L. CARNES, Individually, and as Organizers of THE BANK OF BIXBY, (Proposed),

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES OF AMERICA

The petitioners, The Banking Board of the State of Oklahoma, Citizens Security Bank, Bixby, Oklahoma, Riverside National Bank, Jenks, Oklahoma, Arkansas Valley State Bank, Broken Arrow, Oklahoma, and The First Bank of Haskell, Oklahoma, pray that a Writ of Certiorari issue to review the judgment of the Supreme

Court of the State of Oklahoma, which denied certiorari on October 28, 1975, to the Court of Bank Review of Oklahoma.

I
OPINION BELOW

No written opinion was made by the Oklahoma Supreme Court. It merely denied to review by certiorari, the judgment and opinion of the Court of Bank Review of Oklahoma. See Appendix A.

The opinion of the Court of Bank Review of Oklahoma is not reported. A copy thereof is attached as Appendix B.

II
JURISDICTION

The case was originally appealed to the Court of Bank Review, pursuant to Title 6 O.S. 207. On June 7, 1975, the Court of Bank Review, in a written opinion (Appendix B), vacated the Order of the Banking Board of the State of Oklahoma which had denied the respondents' application for a charter, and ordered said Banking Board to issue a charter to respondents.

Pursuant to Rule 1.155 et seq. of the Rules on Practices and Procedures of the Supreme Court of Oklahoma on certiorari to that court, Title 12 O.S. Chap. 15, App. 2, certiorari was requested of the Oklahoma Supreme Court.

The Oklahoma Supreme Court denied certiorari on October 28, 1975 (Appendix A).

Article 7, Section 1, of the Oklahoma Constitution provides, in part, "The judicial power of this state shall be vested in . . . a supreme court . . ." Section 4 of Article 7 vests the Supreme Court with appellate jurisdiction.

From the final judgment of the Supreme Court, petitioners have no further remedies under the laws of the State of Oklahoma.

The jurisdiction of this Court is invoked under Title 28 U.S.C. §1257 (3).

III
QUESTION PRESENTED

The question presented in this Petition is:

THAT THE OPINION OF THE COURT OF BANK REVIEW REVERSING THE FINDINGS AND CONCLUSIONS OF THE BANKING BOARD OF THE STATE OF OKLAHOMA WAS CONTRARY TO THE ESTABLISHED LAW OF OKLAHOMA AN DEPRIVED PETITIONERS OF THEIR PROPERTY WITHOUT DUE PROCESS AND DENIED THEM THE EQUAL PROTECTION OF THE LAW GUARANTEED UNDER THE FOURTEENTH AMENDMENT.

IV
CONSTITUTIONAL PROVISIONS INVOLVED

The constitutional provision involved in this Petition is petitioners' right to due process and equal protection of the laws which are guaranteed by the Fourteenth Amendment to the United States Constitution.

The Fourteenth Amendment provides:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; or deny to any person within its jurisdiction the equal protection of the laws."

V
STATEMENT OF FACTS

On the 14th day of March, 1972, a hearing was had before the Banking Board of the State of Oklahoma, upon application of respondents for a charter to engage in the banking business in Bixby, Oklahoma. Upon hearing the evidence and being fully advised in the premises, the Banking Board denied the request for a charter. A copy of that Order is attached hereto, marked Appendix C.

The respondents timely filed an appeal with the Court of Bank Review, No. B-25, and that Court entered a

Journal Entry of Judgment on January 15, 1973, which erroneously stated that oral arguments before them, which had been previously ordered, had been heard — which was not true — and, that the Order of the Banking Board contained no Findings of Fact or Conclusions of Law. The Court of Bank Review's Order further stated that *but for* the Quail Creek opinion, *Village Bank v. Seikel,* Okl., 503 P.2d 550 (1972), the Court would have found that a charter should have been granted; however, because of that case, the Order of the Banking Board was affirmed. A copy of said Journal Entry of Judgment is attached hereto, marked Appendix D.

The respondents then applied to the Supreme Court of the State of Oklahoma for certiorari, No. 46,301, which was granted, and on March 12, 1974, that Court, following *Brown v. Banking Board,* Okl., 512 P.2d 166 (1973), reversed the judgment of the Court of Bank Review and remanded the cause so that the Court of Bank Review might follow the rule in *Brown,* supra. A copy of said Order is attached, marked Appendix E.

On January 4, 1975, the Court of Bank Review, No. B-25, remanded the cause to the Banking Board, a copy of said Order is attached, marked Appendix F, and on February 19, 1972, the Banking Board entered its Findings of Fact and Conclusions of Law, No. 72-1. Stating that respondents had not met the provisions of Title 6 O.S., 1965, 305 F, to the satisfaction of the

Board, the Board affirmed its original Order denying application for a bank charter. A copy of said Findings of Fact and Conclusions of Law is attached hereto, marked Appendix G.

On June 7, 1975, the Court of Bank Review, No. B-25, again reversed the Order of the Banking Board and directed issuance of a charter. A copy of said Order is attached hereto, see Appendix B.

Thereafter, on October 28, 1975, the Supreme Court of the State of Oklahoma, No. 48,634, refused to grant certiorari, a copy of the mandate of said Court is attached hereto, see Appendix A. Motions for Oral Argument and Rehearing were denied on January 13, 1976, a copy of the mandate is attached hereto, marked Appendix H, and on January 28, 1976, petitioners moved the Supreme Court to stay its Order. A copy of the petitioners' Motion to Stay is attached hereto, marked Appendix I.

On February 9, 1976, the Supreme Court of the State of Oklahoma entered its Order staying the enforcement of the mandate, and also on February 9, 1976, respondents filed their Response to Motion to Stay. A copy of said Response is attached hereto, marked Appendix J. On February 12, 1976, respondents filed a Motion to Reconsider, a copy of which is attached hereto, marked Appendix K, and on February 24, 1976, petitioners filed a Motion to Vacate, a copy of which is attached hereto, marked Appendix L, pursuant to Order

of the Supreme Court of the State of Oklahoma dated February 25, 1976. A copy of said Order is attached hereto, marked Appendix M. On March 8, 1976, the Supreme Court of the State of Oklahoma entered its final Order vacating the Order to Stay mandate wherein that Court stated that the time to perfect appeal to the Supreme Court of the United States should begin to run from date of that last Order (March 8, 1976). Copy of said Order is attached hereto, marked Appendix N.

The state court procedures were timely filed and state court remedies have been exhausted.

VI
ARGUMENT

CERTIORARI SHOULD BE GRANTED IN THIS CAUSE BECAUSE THE RULINGS, JUDGMENTS AND OPINIONS OF THE COURT OF BANK REVIEW ARE NOT EVEN REMOTELY, MUCH LESS "PROBABLY NOT", IN ACCORD WITH THE DECISIONS OF THIS COURT WITH RESPECT TO FOURTEENTH AMENDMENT GUARANTEES.

The petitioners in the instant case represent both public and private interests. The petitioner, The Banking Board of the State of Oklahoma, operating under a mandate given by the Oklahoma Legislature, represents the entire spectrum of those concerned with banks and banking from the individual depositor to the chartered

banks themselves. The Board is made up of six long-time and highly respected bankers who are charged with applying their expertise to applications for charter to see that only those charters are granted which (1) will fill a public need, (2) are stable enough to protect those who engage in business with them after the charter is granted, and (3) will insure that the banking system of the State of Oklahoma remains strong and viable.

The Banking Board of the State of Oklahoma has no financial interest in charters granted and denied, and acts only to perform its duties as set forth by the Legislature of the State of Oklahoma.

The individual petitioners, Citizens Security Bank, Riverside National Bank, Arkansas Valley State Bank, and The First Bank of Haskell, admittedly have both a personal and financial interest in the granting or rejection of applications for charters made through the Banking Board of the State of Oklahoma. These petitioners also, because of their compliance with the rather stringent requirements of the Oklahoma Banking Code, Federal Statutes relating thereto, the Rules and Regulations of Federal Deposit Insurance Corporation, and other affiliated governmental agencies, have a substantial financial investment and a personal involvement in the community where they do business. They, like all other citizens of the United States, are entitled to all the rights and benefits guaranteed them under the Constitution.

The individual bank petitioners are members of the Federal Deposit Insurance Corporation, which is an agency established under federal law, and, together with that agency, are endowed with the responsibility of protecting their depositors. These banks are informed by the record in this case and do verily belive that the record clearly establishes that respondents have not met the statutory criteria necessary for the issuance of a banking charter, and represent the likelihood of an unsuccessful banking operation.

The brunt of monetary loss due to such an unsuccessful banking operation would fall upon the F.D.I.C., a federal agency, thus making it a matter of federal concern.

It is the position of petitioners herein that the decision of the Court of Bank Review of the State of Oklahoma was so contrary to the established law of the State of Oklahoma as to deprive them of their property without due process. The action of the Supreme Court of the State of Oklahoma in refusing to grant certiorari and review the decision of the Court of Bank Review of the State of Oklahoma compounded the original deprivation. Petitioners respectfully submit that this combined action of the two courts respectively deny them the rights guaranteed under the Fourteenth Amendment to the Constitution of the United States which provides:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; or deny to any person within its jurisdiction the equal protection of the laws."

The Court of Bank Review of the State of Oklahoma is designated as an appellate court created to review the decisions of the petitioner, The Banking Board of the State of Oklahoma, which is an administrative agency composed of banking experts. That Court is composed of three district trial judges who, by the necessity of their position, are required to be well versed in the Statutes of the State of Oklahoma and the decisions of the Supreme Court of the State of Oklahoma. Appellate courts in Oklahoma are committed to the rule that the judgment of the administrative tribunal must be sustained if it is determined that said judgment was based upon substantial evidence.

The term "substantial evidence" is defined by the Supreme Court of the State of Oklahoma, in *Yellow Transit Co. v. State,* Okl., 178 P.2d 83, wherein our Supreme Court, at page 85, stated:

> "In the Pannell case, supra, [192 Okl. 652, 138 P.2d 818] we said:
>
> " 'Both parties agree that substantial evidence means something more than a "scintilla of evi-

dence" and means evidence that possesses something of substance and of relevant consequent and such that carries with it fitness to induce conviction. Both parties agree in citing cases that say that substantial evidence is such evidence that reasonable men may fairly differ whether it establishes a case. The cases cited by plaintiffs in error, N.L.R.B. v. A. S. Abell Co., 4 Cir., 97 F.2d 951, 958, wherein it is said " * * * substantial evidence is evidence furnishing a substantial basis of fact from which the fact in issue can reasonably be inferred * * *", and N.L.R.B. v. Union Pacific States, 9 Cir., 99 F.2d 153, 177, wherein it is stated " * * * It implies a quality of proof which induces conviction and makes an impression on reason", well state the rule upon which the parties agree.

> " 'It is our opinion that the determination of whether there is substantial evidence to establish or support an order made by the commission does not require that the evidence introduced by all of the parties be weighed but only that that evidence in the record tending to support the order entered be considered to determine whether it meets the test stated above. In other words, we are to determine whether the evidence introduced by the Association implies such clarity of proof that it did induce the conviction that the application should be granted, or furnished a substantial basis of fact from which the issue tendered could be reasonably resolved.' "

In the instant case, the Banking Board of the State of Oklahoma, after holding an evidentiary hearing on the

matter, entered Findings of Fact and Conclusions of Law based thereon. These Findings and Conclusions were grounded in and supported by the testimony taken at the evidentiary hearing. Under the substantial evidence rule as set out in *Yellow Transit Co.*, supra, and approved in *Brown v. Banking Board*, Okl., 312 P.2d 166, (1973), the petitioners were entitled to have the judgment of the Banking Board of the State of Oklahoma affirmed.

Petitioners recognize that this Honorable Court is loathe to grant certiorari on cases involving appellate procedures in state courts. The petitioners also are cognizant of the concern of this Honorable Court that all persons of this country be granted the privileges embraced in the Fourteenth Amendment to the Constitution of the United States without reference to any other factor other than their entitlement thereto as a citizen of the United States. *Brown v. Board of Education*, 347 U.S. 843; *Torasco v. Watkins*, 67 U.S. 488; *Shapiro v. Thompson*, 394 U.S. 618; *Kramer v. Union School District*, 395 U.S. 621.

In our case, the Court of Bank Review misapprehended and misapplied the substantial evidence rule. The United States Supreme Court, in *Universal Camera Corp. v. N.L.R.B.*, (1951) 340 U.S. 474, 71 S. Ct. 456, 95 L.Ed. 456, held that:

> ". . . This court will intervene only in what ought to be the rare instance when the standard (of substantial evidence) appears to have been misapplied or misapprehended."

In fact, the Court of Bank Review of the State of Oklahoma, in reversing the decision of the Banking Board of the State of Oklahoma, has so far departed from the accepted and usual course of judicial and appellate procedures as to deny petitioners the rights guaranteed to them by the Constitution of the United States and of the State of Oklahoma. If the highest appellate court in a state ignores the failure of a subordinate court to properly apply the law fairly and equally among its citizens, it has failed to observe due process of the law. If petitioners must petition the Supreme Court of the State of Oklahoma for certiorari to redress this abuse of judicial power and discretion to no avail, the right of citizens to petition for judicial redress of their wrongs is indeed a hollow right.

In the instant case, it would appear that the Court of Bank Review of the State of Oklahoma actually sat as a trial court rather than an appellate court. The opinion promulgated by this court clearly establishes the fact that rather than reviewing the evidence to see if the judgment of the Banking Board of the State of Oklahoma was supported by "substantial evidence", they weighed the evidence, interpreted the testimony of the witnesses and in many instances placed a different connotation on that evidence than that given to it by the Banking Board of

the State of Oklahoma, the expert administrative agency which, under the Statutes of Oklahoma, is given the duty to hear and evaluate the evidence presented and to determine whether the applicants (respondents herein) have met the statutory criteria entitling them to a banking charter. Under these circumstances, it is submitted that in so doing they sat as a trial court and deprived petitioners of their rights without a hearing, and in view of the failure of the Supreme Court of the State of Oklahoma to grant certiorari to review this erroneous assertion of judicial power, the only remedy lies with appeal by petitioners to this Honorable Court to seek a review of these actions by this Court sitting in its appellate capacity. *Armstrong v. Mauzo, et ux.*, 308 U.S. 545; *Brinkerhoff-Farris Trust & Savings Co. v. Hill*, 281 U.S. 673.

Without unduly burdening this Court, it is submitted that the petitioners herein have been deprived of a substantial right without due process of law. The citizens of Oklahoma who look to the Banking Board of the State of Oklahoma to insure that applications for banking charters are fairly, equitably and honestly granted or rejected, based upon the needs of the community, have had to bear the burden of this irresponsible misapplication of bank laws. These citizens' rights were taken from them by the Court of Bank Review without opportunity to protest and the Oklahoma Supreme Court refused to rectify this patently wrong decision. It is submitted that this is an

invaluable right which is and ought to be guaranteed to them under the Constitution of the United States. Their only hope for redress lies with this Honorable Court granting Writ of Certiorari to the Supreme Court of the State of Oklahoma to review the decision of the Bank Review of the State of Oklahoma and the refusal of the Supreme Court of the State of Oklahoma to grant certiorari.

CONCLUSION

WHEREFORE, premises considered, petitioners pray for a Writ of Certiorari issue to the Supreme Court in and for the State of Oklahoma.

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By: W. C. Sellers

Attorneys for Petitioners.

SUPREME COURT
OCT 28 1975
Ross N. Lillard, Jr.
CLERK

Appendix A

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Tuesday, October 28, 1975

THE CLERK IS DIRECTED TO ISSUE THE FOLLOWING ORDERS:

46,281 John B. Anderson and Lucy A. Anderson v. Gerald C. Pickering et al.
Certiorari denied.

47,231 West Creek Apartment, Inc. v. Charles Coulson dba Bud's Plumbing & Heating Co.
Certiorari denied.

47,461 Henry C. Sanders v. E. E. "Ike" Zamrzla.
Certiorari denied.

48,284 Kenneth I. Jung v. Maxine Jung Cory, In Re Attorney fee awarded C. Everett Murphy and Harry C. Evans, etc.
Appellees granted until December 1, 1975 to file brief.

48,337 Big Chief Roofing Co. & Employees Ins. of Wausau v. Zeno Scott and State Industrial Court etc.
Respondents granted until November 24, 1975 to file brief.

48,478 William L. Dangott v. ASG Industries, Inc.
Time for completion of record is extended to December 10, 1975.

48,518 Cashion Community Bank of Cashion, Oklahoma v. Bobby J. Darnell.
Appellee granted until November 26, 1975 to file brief.

48,634 L. C. Neel et al v. Banking Board of State of Oklahoma et al.
Certiorari denied.

48,774 Leonhardt Enterprises and Home Insurance Company v. Eugene Earl Houseman and State Industrial Court.
Respondents granted until November 25, 1975 to file brief.

48,872 Jerry E. Haynes v. Pryor High School and Associated Indemnity Company.
Petitioners granted until November 27, 1975 to file brief.

47,141 Jerry L. Hayden, Mary I. Hayden et al v. Ron Mize, etc.
Appellant granted until November 25, 1975 to file reply brief.

48,188 Lester L. Cunningham v. City of Oklahoma City and Judy Watson etc.
Appellants granted until November 25, 1975 to file reply brief.

48,506 Frank A. Wallace v. R. Wayne Eitzen and Larry L. Strahm.
Time for completion of record is extended to December 18, 1975.

48,631 City of Tulsa, Oklahoma v. Linda R. Moore.
Appellant granted until November 27, 1975 to file brief.

48,784 Monty Davis v. Riverbend Development Corp dba Riverbend Apt. House.
Appellant granted until November 30, 1975 to file brief.

47,944 Theresa Marie Olson v. William Henry Olson
Appellee granted until November 26, 1975 to file brief. No further extension contemplated.

48,009 Herndon Drilling Co. v. Corp. Commission etc and Rex Oil Refining, Inc.
Appellant granted until November 9, 1975 to file reply brief.

48,170 Texas Kenworth Co., dba Okla. Kenworth Co. v. First National Bank of Bethany.
Appellant granted until November 24, 1975 to file brief.

48,289 City of Okla.City v. Eddie Lindsey, Jr. and State Industrial Court.
Petitioner granted until November 21, 1975 to file brief.

48,295 Kenneth B. Charon v. Irene Charon.
Appellant granted until November 25, 1975 to file brief., Leave granted to file typewritten briefs with xerox copies.

2

Ben T. Williams
CHIEF JUSTICE

Appendix B

IN THE COURT OF BANK REVIEW
STATE OF OKLAHOMA

No. B-25

In re: Application for Charter for the
BANK OF BIXBY, Bixby, Oklahoma,

Case No. 72-1, State Banking Board,

L. C. NEEL, ET AL.,
Appellants

Vs.

THE BANKING BOARD OF THE STATE
OF OKLAHOMA ET AL.,
Appellees

ORDER OVERRULING STATE BANKING BOARD AND DIRECTING ISSUANCE OF CHARTER

Now, on this the 7 day of June, 1975, this case comes on for final consideration of the Court of Bank Review of the State of Oklahoma upon the Findings of Fact and Conclusions of Law submitted by the State Banking Board on February 19, 1975, pursuant to the order of this Court made and entered on the 4th day of January, 1975.

The Court, after careful consideration of said Findings of Fact and Conclusion of Law of the State Banking Board and the transcript of the initial proceedings before the State Banking Board, finds that in the discretion of this Court there is no further need for oral orguments or further briefs and that the Court proceeds under the powers granted to said Court, by the provisions of Title 6, Oklahoma Statutes Annotated, Section 207.

On December 16, 1972, this Court entered its order wherein this Court stated that "but for the Quail Creek case opinion", the Court would have found the applicants for a charter the Bixby Bank had sustained the burden of showing a need for a new bank in the community of Bixby. The decision of this Court was appealed to the Supreme Court of the State of Oklahoma, and on March 12, 1974 the Supreme Court reversed the action of this Court and remanded the case for further consideration. As above stated this Court directed the State Banking Board to make and file specific Findings of Fact and Conclusion of Law as the basis of any order granting or denying the requested bank charter.

This Court is not an administrative agency and has been declared to be a valid Court of law with the duty to consider and review the record in all cases appealed to this Court from the State Banking Board, and to take into account, not only that evidence which supports the Banking Board's view, but also that evidence contradictory to the views of the Banking Board. The status and duties of this Court are clearly defined by the decree of the Oklahoma State Supreme Court in the case of Brown vs. Bank Board, 512 Pac. 2d 166.

The State Banking Board in its Findings of Fact and Conclusion of Law entered on the 19th day of February, 1975, found there was *no evidence submitted* to show that the existing bank in Bixby is not adequate to service the community and that the evidence submitted attempting to show public need for a new bank was inconclusive. From a consideration of the entire record this Court cannot agree with such a broad statement inasmuch as the applicants presented the testimony of Dr. Smith, recognized as a marketing expert, and the testimony of others, who presented evidence as to the rapid growth of the community

of Bixby, and that due to the natural barrier of the Arkansas River two distinct communities are emerging, and that sufficient market strength existed for a second bank in the community. Furthermore, the testimony of Mr. George Brown, President of the Citizens Security Bank in Bixby, testified that his bank was not doing as good a job in the Northern area as they did in the Southern part of the community.

The Banking Board further concluded that the name of the proposed bank shows such a close resemblance to the name of a bank which had previously transacted business in the community as to cause confusion. In this regard, at the beginning of the hearing on the application for charter, the protestants interposed a motion to dismiss because the application for a bank charter listed the name of the proposed bank as "Bixby State Bank" and was similar to the name of the Bixby State Bank, which had apparently operated in the community some forty (40) years prior. Thereon, with leave of the board, the applicants amended their petition to show the name of the proposed bank as "Bank of Bixby"; the protestants then offered in evidence a picture taken at some early date but not identified as to when and where taken, which purports to show on the window of a building the name of "Bank of Bixby". However, there is no other evidence as to when, if ever, such a bank ever existed or operated in the community. It is also interesting to note that at the time the board overruled the objection of the protestants, and that the application as amended was submitted. This Court is of the opinion that in this case that the name of the proposed bank, "The Bank of Bixby", could not at this time resemble the name of any other bank so closely as to be likely to cause confusion in the community.

The Banking Board found as a matter of fact that no

definite arrangements had been made for a building for the proposed bank, other than "assumption on the part of the management one of the incorporators would provide a building". The testimony presented at the hearing on the part of Mr. Robert Hodgen was to the effect the applicants had a firm commitment from Mr. Neal that he would build a building, and arrangements had been made for a lease on such building by the proposed bank. This Court is of the opinion that such arrangements are not unusual in matters of this sort and we find no basis for refusing a charter on such grounds.

In its Conclusion of Law the Board states that the proposed bank "possibly" is being formed for other purposes than the legitimate objects contemplated by the banking code. This Court is of the opinion that such a statement is not based on sufficient evidence in the record and merely states an opinion on the part of the board and not a Conclusion of Law based upon facts established by the evidence herein.

The law of this state as expressed in Title 6, Oklahoma Statutes Annotated, Section 207, expressly provides that this Court may affirm the order of the board, may direct such action as may be affirmatively required by law, or may reverse or modify the order of the board if the Court finds the order not supported by substantial evidence in the record. The term "substantial evidence" has been defined several times by this Court, and by the Supreme Court, State of Oklahoma.

It is the opinion of this Court that the Findings of Fact and Conclusion of Law, made the 19th day of February, 1975, by the State Banking Board, and its order based thereon, denying the application for the charter for the Bank of Bixby are not supported by substantial evidence in the record, but that the applicants have complied

with the burden of showing that the public need and advantage in the community could be better served by the issuance of the charter, and that said applicants are entitled to have a charter issued as requested.

It is therefore, Ordered, Adjudged and Decreed by this Court that the action and order by the State Banking Board denying the charter be, and the same is hereby reversed, and the State Banking Board is ordered and directed to issue a charter to the applicants herein upon showing compliance with any further statutory requirements prerequisite to the issuance of a bank charter.

/s/ Margaret Lamm
Margaret Lamm, Presiding Judge

/s/ Donald E. Powers
Donald E. Powers, Vice-Presiding Judge

/s/ Joe D. Shumate, Member
Joe D. Shumate, Member

Appendix C

BEFORE THE BANKING BOARD OF THE STATE OF OKLAHOMA

No. 72-1

ORDER

After the mailing of required notices by the State Bank Commissioner, a hearing was held March 14, 1972, in the Congress Room of the Lincoln Plaza, Oklahoma City, on Application No. 72-1, an application for authority to organize a state bank in Bixby, Oklahoma, to be located at 13403 South Memorial, more specifically described as the East 270 feet of the West 330 feet of the North 330 feet of the Southwest Quarter of the Northwest Quarter of Section 12, Township 17 North, Range 13 East, Tulsa County, and to be known as Bixby State Bank, under and in accordance with the provisions of the Oklahoma Banking Code. All members of the Banking Board were present and presided at said hearing.

The application, filed under the name of Bixby State Bank, was amended during the hearing to the name of The Bank of Bixby.

After careful review and consideration of all the evidence presented at the hearing, the application for authority, and the Oklahoma Banking Code, it was determined on March 14, 1972 that the application for the chartering of the bank should not be approved for the following reason:

THAT THE PUBLIC NEED AND ADVANTAGE WILL NOT BE PROMOTED BY THE ESTABLISHMENT OF THE PROPOSED BANK.

There was no evidence submitted to show that the existing bank in Bixby is not adequately serving the com-

munity. There was evidence submitted by both parties indicating a high degree of customer satisfaction with the existing banks in the area.

Evidence submitted showing public need was inconclusive. The Banking Board, in reaching the decision, was influenced by the fact that there was not substantial evidence showing public need and that not a single person committed himself to opening a checking or savings account, borrow money from the proposed bank, or to use any of its services.

It is therefore ordered that Application No. 72-1 be rejected and the Board directs that notice of this rejection be mailed to the applicants within five days from the date hereof.

DATED THIS 14th DAY OF MARCH, 1972.

THE BANKING BOARD OF THE STATE OF OKLAHOMA

By: /s/ John D. Williams
JOHN D. WILLIAMS
Bank Commissioner and
Chairman of the Banking Board

Appendix D

IN AND BEFORE THE COURT OF BANK REVIEW, STATE OF OKLAHOMA

RE: Application for Charter for THE BANK OF BIXBY, Bixby, Oklahoma
Case No. 72-1, Before the Banking Board.

L. C. NEEL, CURTIS G. HOLSTED, ROBERT H. HODGEN, ERNEST E. CROCKER and GAIL L. CARNES, Individually and as Organizers of THE BANK OF BIXBY, (Proposed),

Appellants-Petitioners.

vs.

THE BANKING BOARD OF THE STATE OF OKLAHOMA, CITIZENS SECURITY BANK, BIXBY, OKLAHOMA; RIVERSIDE NATIONAL BANK, JENKS, OKLAHOMA; ARKANSAS VALLEY STATE BANK, BROKEN ARROW, OKLAHOMA, and THE FIRST BANK OF HASKELL, OKLAHOMA,

Appellees-Respondents.

Court Case No. B-25

JOURNAL ENTRY OF JUDGMENT

It will be remembered that:

1. The Petitioners filed their application (No. 72-1) before the Oklahoma State Banking Board for authority to organize a State bank in Bixby, Oklahoma.

2. A hearing before the full membership of the Board was held on March 14, 1972, with the applicants being represented by Attorney W. Keith Rapp of the law firm of

Howard, Rapp & Gaskill of Tulsa, Oklahoma, and the protestants being represented by the law firm of Crowe, Dunlevy, Thweatt, Swinford, Johnson & Burdick, and by the law firm of Sellers & Sellers of Sapulpa, Oklahoma.

3. *An Order (without Findings of Fact or Conclusions of Law) was entered by the Banking Board on March 14, 1972, wherein the Application was denied and disapproved.*

4. The Petitioners, only by Attorney Rapp (as the Crowe firm does not appear in the appeal case) filed their "Petition for Review" on March 28, 1972 before the Court of Bank Review; and thereafter on July 13, 1972 the two volumes transcript of the proceedings were finished by the Official Court Reporter Jean Cason and then filed in this Court.

5. All Counsel were on August 25, 1972 directed to file briefs on or before September 15, 1972; and the oral argument hearing date was by this Court set for September 30, 1972.

6. Oral arguments were presented by counsel on September 30, 1972, after which the case was taken under advisement (to await the final disposition on Petition for re-hearing in the Quail Creek case No. 45,492, entitled The Village Bank, et al vs. Roy L. Seikel, et al, wherein Certiorari was granted and an opinion issued by the Supreme Court of Oklahoma on September 19, 1972).

7. Thereafter, on December 7, 1972 a Mandate was issued by the Supreme Court of Oklahoma in the Quail Creek case (filed the following day of December 8, 1972 in The Court of Bank Review) wherein the decision and opinion in that case was finalized by vacating the Judgment of The Court of Bank Review and affirming the Order of the Banking Board.

8. On December 16, 1972 the Court of Bank Review met again at Oklahoma City, to consider the disposition of the Bank of Bixby appeal. *Thereupon this Court found that* but for *the Quail Creek case opinion and Mandate, this appellate court, from the entire record, would have found:*

1. *That the applicants for the Bixby Bank had sustained the burden of showing a need for a new bank.*
2. *That the very brief Order of the Banking Board of March 14, 1972 failed to contain relevant findings and was not and is not of the quality of proof which would or should induce a conviction that such Order was proper.*
3. That a Charter should have been granted.

However, the decision in the Quail Creek case being the mandated current law of Oklahoma, it is now the ORDER AND JUDGMENT of the Court of Bank Review that the Order and decision of the Banking Board of March 14, 1972, wherein the Charter was Denied, be and the same is hereby *AFFIRMED.*

Dated December 16, 1972 at Oklahoma City, Oklahoma.

Case No. B-25
Bixby

/s/ Geo. Howard Wilson
Geo. Howard Wilson, Presiding Judge

/s/ Raymond W. Graham
Raymond W. Graham, Judge

/s/ Joe D. Shumate, Judge
Joe D. Shumate, Judge

Appendix E

FOR OFFICIAL PUBLICATION

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

IN RE: Application for Charter for THE BANK OF BIXBY, Bixby, Oklahoma Case No. 72-1, Before the Banking Board

L. C. NEEL, CURTIS G. HOLSTED, ROBERT H. HODGEN, ERNEST E. CROCKER and GAIL L. CARNES, Individually and as Organizers of THE BANK OF BIXBY, (Proposed),

Appellants,

v.

THE BANKING BOARD OF THE STATE OF OKLAHOMA, CITIZENS SECURITY BANK, BIXBY, OKLAHOMA; RIVERSIDE NATIONAL BANK, JENKS, OKLAHOMA; ARKANSAS VALLEY STATE BANK, BROKEN ARROW, OKLAHOMA; and THE FIRST BANK OF HASKELL, OKLAHOMA,

Appellees.

Proceedings for certiorari on decision of Court of Bank Review; Geo. Howard Wilson, Raymond W. Graham, Joe D. Shumate, Judges.

Appellants filed an application for authority to organize a state bank. Appellee banks protested. After notice and hearing the Banking Board denied the application. Applicants appealed to the Court of Bank Review. That court affirmed but indicated that it might not have done so had it believed that it could consider certain evidence. Appellants commenced this proceeding for certiorari.

CERTIORARI GRANTED; JUDGMENT OF COURT OF BANK REVIEW REVERSED AND THE CAUSE REMANDED SO THAT COURT OF BANK REVIEW MIGHT FOLLOW RULE EXPRESSED IN LATER CASE.

Howard, Rapp & Gaskill,
Tulsa, Oklahoma,
For Appellants,

Sellers & Sellers,
Sapulpa, Oklahoma,
For Appellees.

LAVENDER, J.:

This matter concerns an application for a charter for the establishment of The Bank of Bixby to be located in North Bixby, Oklahoma. After the investigation and upon the notice required by 6 O.S. 1971 § 306, a hearing was held before The Banking Board. At that hearing considerable evidence was adduced, much of which was directed toward the issue of whether " * * * the public need and advantage will be promoted by the establishment of the proposed bank * * *." 6 O.S. 1971 § 306 F(1). That question, or issue, was one of several questions contained in Section 306 F, supra, which are required by the statute to be affirmatively found by the Banking Board before it may, in the exercise of "its sole discretion," approve the application for a bank charter. The Banking Board at the conclusion of the hearing issued its order dated March 14, 1972, in which it found in effect that there was not sufficient substantial evidence adduced to satisfy the above quoted statutory condition. From the order denying the application the applicants— appellants here — appealed to the Court of Bank Review, as provided by 6 O.S. 1971 § 207.

In the appeal to the Court of Bank Review one of the principal complaints of the applicants concerning the Banking Board's order was that it was not supported by substantial evidence in the record. Before the Court of Bank Review made its determination of the matter this court handed down its opinion in The Village Bank, et al. v. Seikel, et al. (1972), Okl., 503 P.2d 550. In that case we were concerned with the scope of the review to be accorded by the Court of Bank Review where the question was whether the Banking Board order was supported by substantial evidence. We stated, " * * * (that Court) is not to consider the 'evidence *opposed* to the Board's view' in making its determination of whether the order is *supported* by substantial evidence in the record unless the evidence opposing the Board's view is such as to destroy the probative value of the evidence introduced in support of the Board's order." (Emphasis contained in the opinion.) Subsequent to the issuance of the mandate in the Seikel case, the Court of Bank Review issued its order in the matter presently before the court. In its order, which we deem unnecessary to quote herein verbatim, it appears that if the Court of Bank Review could have considered evidence in the record which merely contradicted the evidence which supported the Banking Board's findings (as distinguished from evidence which destroyed the probative effect of the Board's findings), the Court of Bank Review might have held that the finding of the Banking Board, "That the public need and advantage will not be promoted by the establishment of the proposed bank," was not supported by substantial evidence.

Subsequent to entry of the Court of Bank Review order this court adopted an opinion in Brown et al. v. The Banking Board (1973), Okl., 512 P.2d 166 in which we modified the holding in the Seikel case as follows:

> "In determining whether there is substantial evidence in the record to support the order of the Banking Board, the reviewing court shall look to the entire record and take into account not only that evidence which supports the Banking Board's view, but also the evidence contradictory to the view of the Banking Board."

In consideration of the foregoing we have determined to grant certiorari herein for the purpose of remanding this matter to the Court of Bank Review so that that court may follow the rule above set forth in Brown, supra.

Upon the remand of this matter, the Court of Bank Review may wish to further remand the matter to the Banking Board for that agency to make sufficient findings of fact — assuming that the ones which it has already made are not sufficient to afford judicial review. In any event, when the Court of Bank Review has determined that the findings of fact and conclusions of law of the Banking Board are sufficiently stated so that a proper review may be made as required also by Brown v. Banking Board, supra, the reviewing court will then be authorized to give the full review contemplated by Brown v. Banking Board, supra.

We notice that in the order of the Court of Bank Review it concludes that "a Charter should have been granted." We assume that upon final review of this matter if the court determines that the single issue or question decided by the Board adversely to the applicants was not supported by substantial evidence that the court instead of itself ordering the issuance of a charter will remand the matter to the Banking Board for that agency to ascertain to its satisfaction whether all of the statutory conditions prerequisite to the approval of an application for a bank charter, as provided in 6 O.S. 1971 § 306 F, have been met.

For the further guidance of the parties, and for the bench and bar generally, we take this opportunity to note that if the question of whether the Banking Board's order was supported by substantial evidence in the record be again presented to this court we will be guided by our pronouncement in Vose v. Banking Board (1971), Okl., 483 P.2d 731, wherein we stated:

> "In Oklahoma, the Legislature has * * * charged the Court of Bank Review and not this Court with the normal and primary responsibility of reviewing Banking Board orders. Whether on the record as a whole there is substantial evidence to support the findings of the Banking Board is a question the Legislature has placed in the keeping of the Court of Bank Review."

and, also wherein we adopted the view expressed by the U.S. Supreme Court in Universal Camera Corp. v. N.L.R.B., (1951), 340 U.S. 474, 71 S.Ct. 456, 95 L.Ed. 456:

> " * * * This Court will intervene only in what ought to be the rare instance when the standard (of substantial evidence) appears to have been misapprehended or grossly misapplied."

In the future we shall be guided by the above principles in determining whether to grant certiorari to review a decision of the Court of Bank Review where that decision is grounded solely upon whether the order of the Banking Board was supported by substantial evidence. The term "substantial evidence" is defined in Yellow Transit Co. v. State (1947), 198 Okl. 229, 178 P.2d 83.

Judgment of the Court of Bank Review reversed and the cause is remanded for further proceedings.

ALL OF THE JUSTICES CONCUR.

Appendix F

IN THE COURT OF BANK REVIEW
STATE OF OKLAHOMA

No. B-25

In re: Application for Charter for the BANK OF BIXBY, Bixby, Oklahoma, Case No. 72-1, State Banking Board,

L. C. NEEL, ET AL.,

Appellants

vs.

THE BANKING BOARD OF THE STATE OF OKLAHOMA, ET AL.,

Appellees

ORDER REMANDING TO STATE BANKING BOARD WITH DIRECTIONS

Now on this 4th day of January, 1975, this case came on for hearing before the Court of Bank Review of the State of Oklahoma pursuant to the Order of this court made on the 14th day of December, 1974, with the Applicants being represented by Mr. W. Keith Rapp of Tulsa, Oklahoma, and the Protestants being represented by W. C. Sellers of Sapulpa, Oklahoma.

After hearing statements of counsel and reviewing the record herein, the court finds that on March 12, 1974, the Supreme Court of the State of Oklahoma entered its Order wherein the judgment of the Court of Bank Review affirming the decision of the State Banking Board was reversed and remanded to this court. That the Order of the Court of Bank Review entered on December 16, 1972, that this court "but for the Quail Creek case opinion" would have found that the Applicants for the Bixby Bank had sustained the burden of showing a need for a new bank; in

said opinion this court also found that the Order entered by the Banking Board on March 14, 1972, wherein the Application was denied was made without Findings of Fact or Conclusions of Law.

It is now well established that the Banking Board of Oklahoma is subject to the provisions and restrictions of the Oklahoma Administrative Procedures Act, 75 O.S. 1963, Sec. 301, as amended. A final order of the State Banking Board shall include Findings of Fact and Conclusions of Law separately stated, see Brown v. Banking Board, 512 P2d 166.

In accordance with the opinion of the Supreme Court of the State of Oklahoma in this case and its mandate issued on the 16th day of October, 1974, this court finds that Findings of Fact and Conclusions of Law are necessary to enable it to make its final decision and no order should now issue until this court has had a chance to examine such Findings and Conclusions to determine if there was substantial evidence for a rational basis for the action of the State Banking Board.

It is therefore ordered, adjudged, and decreed by this court that the Judgment and Order of the Banking Board of the State of Oklahoma should be, and is hereby, remanded to said Banking Board with directions to make and separately state specific Findings of Fact and Conclusions of Law as the basis of any order granting or denying the requested bank charter. When this has been done within a reasonable time, such Findings shall be filed herein for the further attention of this court.

/s/ Joe D. Shumate
Joe D. Shumate, Presiding Judge,
Court of Bank Review

Appendix G

BEFORE THE BANKING BOARD
OF
STATE OF OKLAHOMA

No. 72-1

IN RE: APPLICATION FOR CHARTER OF THE BANK OF BIXBY, Bixby, Oklahoma, No. 72-1 Before the Banking Board of the State of Oklahoma

L. C. NEEL, CURTIS G. HOLSTED, ROBERT H. HODGEN, ERNEST E. CROCKER, and GAIL L. CARNES,

Applicants,

v.

CITIZENS SECURITY BANK, Bixby; and RIVERSIDE NATIONAL BANK, Tulsa.

Protestants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause heretofore came on for hearing on the merits on March 14, 1972, before the Banking Board of the State of Oklahoma. The applicants appeared in person and by and through their attorneys, Mr. Keith Rapp and Mrs. Bryan Gaskill. The protestants appeared by and through their attorneys of record, Mr. Bill Sellers, Mrs. Patricia Sellers, and Mr. Andrew M. Coats for Citizens Security Bank, Bixby, Oklahoma, and Mr. Jerry R. Nichols for Riverside National Bank, Tulsa, Oklahoma.

The Banking Board of the State of Oklahoma, at the conclusion of the hearing on March 14, 1972, made and entered its Order of said date, under the terms and pro-

visions of which the captioned application for authority to engage in the banking business at 13403 S. Memorial, Bixby, Oklahoma, was denied. A copy of said Order is attached hereto as Exhibit "A." The applicants thereafter appealed the Order of the Banking Board to the Court of Bank Review of the State of Oklahoma, said appeal having been assigned Docket No. B-25 in said Court. By the terms and provisions of its opinion filed January 15, 1973, the ruling of the Banking Board of the State of Oklahoma was affirmed.

Applicants then appealed to the Supreme Court of the State of Oklahoma, said matter there being docketed under No. 46,301. In accordance with the opinion of the Supreme Court of the State of Oklahoma in this case and its mandate issued on the 16th day of October, 1974, the Supreme Court remanded the judgment of the Court of Bank Review with directions to the Banking Board to make and separately state specific findings of fact and conclusions of law as the basis of any order granting or denying the requested bank charter.

Now on this 19th day of February, 1975, the Banking Board of the State of Okalhoma does hereby make and separately state its specific findings of fact and conclusions of law, as follows, which constitute the basis of its prior Order denying the application of L. C. Neel, et al., for authority to engage in the banking business at Bixby, Oklahoma, as The Bank of Bixby.

FINDINGS OF FACT

1. There was no evidence submitted to show that the existing bank in Bixby is not adequately serving the community. To the contrary, evidence was submitted that indicated a high degree of customer satisfaction with the present bank and the applicants' expert marketing witness indicated several times that no one denies that the area

citizens have expressed satisfaction with the existing banking facilities, as well as a high degree of merchants' satisfaction.

The evidence submitted attempting to show public need was inconclusive. The questionnaire, which was the basis of market analysis, was based upon questions so vague and speculative that no realistic decision could be derived therefrom.

2. The high degree of individual and merchant satisfaction would indicate an inadequate source of bank customers. The Banking Board noted the fact that there was not a single person committed to open an account, borrow money, or to use any of the services of the applicant bank.

The evidence showed aggressive activities of not only the existing Bixby bank but also the banks at Broken Arrow; Jenks and Tulsa, which create a highly competitive bank environment and would not afford likelihood of success for a new bank.

3. The testimony indicated certain actions on the part of one incorporator to separate north and south Bixby and further indicated the incorporator would benefit personally through his other activities if a charter was granted north of the river.

Further, the Banking Board noted that no definite arrangements had been made for a building, other than an assumption on the part of the management that one of the incorporators would provide a building, and no formal agreement had been reached as to the rent, other than for the first two or three years, except that at a later date the bank would negotiate with the incorporators to buy or continue leasing, but upon uncertain terms.

4. That the proposed capital according to the application was $200,000.00 capital; $200,000.00 surplus; and

$100,000.00 undivided profits.

5. The application states that Robert H. Hodgen and Carl Fenderson were to be the officers of the bank and did not specify which would be the managing officer. Both appear to have sufficient experience in the banking field to qualify them as bank officers, and though the Banking Board did not determine which individual would be specified as managing officer, it was concluded that Mr. Fenderson would be and would have the counsel of Mr. Hodgen. The testimony dealt at length as to whether or not Mr. Fenderson was a faithful employee, but no attempt by this Board has been made to determine the ultimate consequences should further investigation reveal the fact that Mr. Fenderson committed an act of unfaithfulness to his previous employer.

6. Applicants first proposed the name "Bixby State Bank", which is the same name as a previously existing bank in Bixby, Oklahoma. Thereafter, they amended the name to "The Bank of Bixby", likewise the name of a previously existing bank in Bixby, Oklahoma.

7. The application was in compliance with the provisions of the Statutes, in that the necessary fees had been paid and the subscription and organizational expense had been paid.

CONCLUSIONS OF LAW

1. That a public need and advantage would not be promoted by the establishment of the proposed bank.

2. That the conditions in the community in which the proposed bank would transact business do not afford reasonable promise of successful operation.

3. That the bank possibly is being formed for other purposes than the legitimate objects contemplated by the Banking Code.

4. That the proposed capital was not less than required by law and was adequate in the light of current and prospective conditions.

5. That those proposed as officers and directors have sufficient experience, ability and standing in the community to afford reasonable promise of successful operation.

6. That the name of the proposed bank so closely resembles the name of a bank which had previously transacted business in the community as to cause confusion.

7. That the applicants have complied with all the applicable provisions of the Oklahoma Banking Code.

ORDER

Now, therefore, it is hereby ordered, since the applicants have not met to the satisfaction of the Board those provisions of Title 6 O.S., 1965, § 305 F, that the Order of the Banking Board issued on March 14, 1972, is affirmed and that Application No. 72-1 of The Bank of Bixby, Bixby, Oklahoma, be denied.

Dated this 19th day of February, 1975.

/s/ H. E. Leonard
H. E. LEONARD
STATE BANK COMMISSIONER AND
CHAIRMAN OF THE BANKING BOARD

FILED
SUPREME COURT
JAN 15 1976
Ross [illegible], Jr.
CLERK

Appendix H

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Tuesday, January 13, 1976

THE CLERK IS DIRECTED TO ISSUE THE FOLLOWING ORDERS:

47,212 - Charles Sanders v. Independent School District No. 1-2 of Kiowa County, Oklahoma.
Certiorari denied.

47,347 - State of Okla. ex rel John L. Clifton, DA v. Leonard Reeser d/b/a L & R Optical.
Oral argument and rehearing denied.

47,388 - A. B. Burkes v. Norman Moser.
Certiorari denied.

47,470 - Lena J. Luker etc. v. Gene C. Reed et al.
Tendered second petition for rehearing refused and denied.

47,689 - Mary Jane Martin v. Harrah Independent School District et al.
Oral argument and rehearing denied.

47,741 - Boyce Duane Williams v. Celestia Elizabeth Williams.
Rehearing denied.

47,855 - William Duane Taylor v. Carol Taylor.
Rehearing denied.

48,369 - Eunice G. Abbotts, Executrix of Estate of Glenn A. Young, Dec. v. Wilma E. Young.
Appeal dismissed on joint motion of appellant and appellee.

48,634 - In Re: Application For Charter Of Bank Of Bixby, Bixby, Okla., Case No. 72-1, Before The Banking Board. L. C. Neel et al v. Banking Board of State of Okla. et al.
Oral argument and rehearing denied.

48,649 - Robert F. Oliphant v. Melvin Evans and Eddie Evans d/b/a Evans Construction Co.
Appeal dismissed on motion of appellants.

48,835 - Sheridan Village Shipping Center etc. et al v. Corporation Commission of Oklahoma and Public Service Co. of Oklahoma.
Appeal dismissed on motion of appellant.

48,975 - First National Bank and Trust Co. of Ada v. Mercer Chevrolet, Inc.
Appeal dismissed on motion of appellant.

49,032 - Harry James Robinson v. Lear Siegler, Inc.
Rehearing denied.

47,436 - Joe K. Page v. Ralph Rose and Claudie Clubb.
Appellant granted until February 9, 1976 to file brief in support of petition for rehearing.

47,611 - Billie Jo Stansberry v. Richard D. Stansberry, M.D.
Appellant granted until February 11, 1976 to file reply brief.

48,660 - Ramon A. Limjoco and Helen M. Limjoco, husband wife v. Francis M. Irwin and Opal Lee Irwin, husband and wife.
Appellants granted until February 17, 1976 to file brief. No further extensions contemplated.

Denver N. Davison
Chief Justice

Appendix I

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

NO. 48,634

IN RE: Application for Charter for THE BANK OF BIXBY, Bixby, Oklahoma, Case No. 72-1, Before the Banking Board.

L. C. NEEL, CURTIS G. HOLSTED, ROBERT H. HODGEN, ERNEST E. CROCKER and GAIL L. CARNES, Individually, and as Organizers of THE BANK OF BIXBY, (Proposed).

Appellees,

Vs.

THE BANKING BOARD OF THE STATE OF OKLAHOMA; CITIZENS SECURITY BANK, BIXBY, OKLAHOMA; RIVERSIDE NATIONAL BANK, JENKS, OKLAHOMA; ARKANSAS VALLEY STATE BANK, BROKEN ARROW, OKLAHOMA; and THE FIRST BANK OF HASKELL, OKLAHOMA,

Appellants.

MOTION TO STAY

Certiorari was denied by this Court in this cause on January 13, 1976, and the mandate was received on January 15, 1976. Appellants are in the process of perfecting a Petition for a Writ of Certiorari to the United States Supreme Court in this cause. They, therefore, respectfully pray that the Oklahoma State Banking Commissioner be directed to refrain from issuing a banking charter to ap-

pellees until final disposition of this matter by the United States Supreme Court.

SELLERS & SELLERS
Attorneys for Appellants

202 Security Bank Building
P. O. Box 1404
Sapulpa, Oklahoma 74066
(918) 224-5357

CERTIFICATE OF MAILING

The undersigned certifies that a true and correct copy of the above and foregoing Motion to Stay was mailed on the 28 day of Jan., 1976, by depositing, postage prepaid, in the U.S. Mail, in sealed envelopes, to the following:

H. E. Leonard, Bank Commissioner
4100 Lincoln Blvd.
Malco Building - 2nd Floor
Oklahoma City, Oklahoma

Mr. W. Keith Rapp
Howard, Rapp & Gaskill
520 Center Building
630 West Seventh Street
Tulsa, Oklahoma 74127

Mr. George Brown
Citizens Security Bank
109 North Armstrong
Bixby, Oklahoma 74008

SELLERS & SELLERS
Attorneys for Appellants
202 Security Bank Building
P. O. Box 1404
Sapulpa, Oklahoma 74066

Appendix J

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

NO. 48,634

IN RE: Application for Charter for THE BANK OF BIXBY, Bixby, Oklahoma, Case No. 72-1, Before the Banking Board.

L. C. NEEL, CURTIS G. HOLSTED, ROBERT H. HODGEN, ERNEST E. CROCKER and GAIL L. CARNES, individually and as organizers of THE BANK OF BIXBY (Proposed),

Appellees,

vs.

THE BANKING BOARD OF THE STATE OF OKLAHOMA; CITIZENS SECURITY BANK, Bixby, Oklahoma; RIVERSIDE NATIONAL BANK, Jenks, Oklahoma; ARKANSAS VALLEY STATE BANK, Broken Arrow, Oklahoma; and THE FIRST BANK OF HASKELL, OKLAHOMA,

Appellants.

RESPONSE TO MOTION TO STAY

COMES NOW the Appellees, and for response to Appellants' Motion to Stay, state as follows:

1. That the Statutes of the State of Oklahoma, 6 Okla. Stat. 306, provides:

* * *

G. Applicants' actions following approval of appli-

cation — Time therefor. Within ninety (90) days after Board approval or any additional period allowed by the Board: . . .

2. That the sole ground upon which the Appellant process in this case was presented and reviewed by both the Court of Bank Review and this Court was that of "misapprehension or misapplication of the standard of substantial evidence". The United States Supreme Court in *Universal Camera Corp. v. NLRB*, (1951) 340 U.S. 474, 71 S.Ct. 456, 95 L.Ed. 456, held that:

> ". . . This court will intervene only in what ought to be the rare instance when the standard (of substantial evidence) appears to have been misapplied or misapprehended."

This Court has repeatedly cited this case with approval. Hence, Appellees would assert that the sole issue which the Appellants can present for review to the United States Supreme Court by Writ of Certiorari is: this Court erred in refusing to grant Appellants' Petition for Certiorari and Application for Rehearing.

3. That at no time did the Appellants raise or present a substantial Federal Question or constitutional issue during the course of Appellant process to either the Court of Bank Review or this Court. That all issues to be presented for review by the United States Supreme Court will involve local matters; and, as such, the United States Supreme Court has consistently refused to review or grant Certiorari in matters of local impact. Hence, there exists little likelihood of the United States Supreme Court granting Certiorari.

4. That an order of the nature requested by the Appellants directed to the State Banking Board is improper and should be denied for the reason that:

(a) The Appellants in requesting such an order have failed to comply with the requirements of 75 Okla.Stat. 319(2) in failing to file an application supported by verified statements establishing that continuous and irreparable impairment of their constitutional rights would occur by the enforcement of the decision of this Court.

(b) That the decision of this Court being final, this Court is without jurisdiction to issue an order to an Administrative Agency of the State, upon a matter extraneous to the issues presented to this Court for review and decision by the Appellants.

5. That the Statutes of the United States of America, 28 U.S.C. 2101, provides:

* * *

(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

* * *

(f) In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court. The stay may be granted by a

judge of the court rendering the judgment or decree or by a justice of the Supreme Court, and may be conditioned on the giving of security, approved by such judge or justice, that if the aggrieved party fails to make application for such writ within the period allotted therefor, or fails to obtain an order granting his application, or fails to make his plea good in the Supreme Court, he shall answer for all damages and costs which the other party may sustain by reason of the stay.

6. That the Appellees will, by further delay, if granted, suffer irreparable harm and damage due to the proposed bank's inability to open, operate and generate income, suffer additional legal expenses, and serve as a denial to the community of Bixby and deprive said community of a banking facility which the Court of Bank Review and this Court has found to be of public need and necessity.

7. That the monetary damages that will be suffered by the Appellees if such delay is granted are at present, incapable of exact calculation, but which the Appellees assert will be not less than $30,000.00, but which, upon exact calculation upon termination of this delay, may be higher.

WHEREFORE, PREMISES CONSIDERED, Appellees respectfully urge this Court to deny Appellants' Motion to Stay, or in the alternative, if the Court should grant Appellants' Motion, to do so conditioned upon: (1) a requirement that Appellants post a bond in an amount of not less than $60,000.00 in accordance with 75 Okla. Stat. 319(2), and; (2) issue an order to the State Banking Board staying the running of time under 6 Okla. Stat. 306(G) in this matter pending further order of the

Court, and; (3) for such other relief as the Court deems proper and just.

HOWARD & RAPP
By /s/ W. Keith Rapp
W. Keith Rapp
Attorney for Appellees
520 Center Building
630 West Seventh
Tulsa, Oklahoma 74127
(918) 583-2624

CERTIFICATE OF MAILING

The undersigned certifies that a true and correct copy of the above and foregoing Response to Motion to Stay was mailed on the _____ day of February, 1976, by depositing, postage prepaid, in the U.S. Mail, in sealed envelopes, to the following:

H. E. Leonard, Bank Commissioner
4100 Lincoln Boulevard
Malco Building - 2nd Floor
Oklahoma City, Oklahoma

Sellers & Sellers
Attorneys at Law
202 Security Bank Building
P. O. Box 1404
Sapulpa, Oklahoma 74066

Mr. George Brown
Citizens Security Bank
109 North Armstrong
Bixby, Oklahoma 74008

/s/ W. Keith Rapp
W. Keith Rapp

Appendix K

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

NO. 48,634

IN RE: Application for Charter for THE BANK OF BIXBY, Bixby, Oklahoma, Case No. 72-1, Before the Banking Board.

L. C. NEEL, CURTIS G. HOLSTED, ROBERT H. HODGEN, ERNEST E. CROCKER and GAIL L. CARNES, individually and as organizers of THE BANK OF BIXBY (Proposed),

Appellees,

vs.

THE BANKING BOARD OF THE STATE OF OKLAHOMA; CITIZENS SECURITY BANK, Bixby, Oklahoma; RIVERSIDE NATIONAL BANK, Jenks, Oklahoma; ARKANSAS VALLEY STATE BANK, Broken Arrow, Oklahoma; and THE FIRST BANK OF HASKELL, OKLAHOMA,

Appellants

MOTION TO RECONSIDER

COMES NOW the Appellees and move this Court to reconsider the Order of this Court filed on the 9th day of February, 1976, for the reason and upon the grounds that:

1. Said Order is vague, in that, it does not provide the Appellees, or the Banking Board of the State of Oklahoma, one of the named Appellants herein, with sufficient guidelines to ascertain the intent of this Court relative to 6 Okla.Stat. 306(G), which provides:

> G. Applicants' actions following approval of application — Time therefor. Within ninety (90) days after Board approval or any additional period allowed by the Board: . . .

2. This matter was appealed to this Court as a result of the statutory appellant review process, the decisions of which were adverse to Appellants, before the Court of Bank Review, and this Court; as a result, there is no trial court per se.

3. Unless the Court reconsiders or issues an Order Nunc Pro Tunc clarifying and defining the meaning and intent of this Court's prior order, it is entirely conceiveable that either or both parties will be required to seek additional instruction and / or relief before this Court.

4. That the bond required by the Court is insufficient to compensate the Appellees for damages which will in all probability be sustained by the Appellants' frivolous appeal from the decision of this Court.

5. That the Appellants' Motion to Stay should be dismissed for the reasons stated in Appellees' Response to Motion to Stay filed in this Court, a copy of which is attached hereto as Exhibit "A" and incorporated herein as if fully set forth.

WHEREFORE, PREMISES CONSIDERED, Appellees respectfully urge this Court to reconsider its Order of 9 February, 1976, and issue an Order Nunc Pro Tunc, clarifying and defining the meaning and intent thereof, and to require a bond in an amount sufficient to indemnify Appellees if the Appellants' deliberate and intentional

delay is summarily dismissed by the United States Supreme Court.

HOWARD & RAPP

By /s/ W. Keith Rapp
W. Keith Rapp
Attorney for Appellees
520 Center Building
630 W. 7th
Tulsa, Oklahoma 74127
(918) 583-2624

CERTIFICATE OF MAILING

The undersigned certifies that a true and correct copy of the above and foregoing Motion to Reconsider was mailed on the _____ day of February, 1976, by depositing, postage prepaid, in the U.S. Mail, in sealed envelopes, to the following:

H. E. Leonard, Bank Commissioner
4100 Lincoln Boulevard
Malco Building - 2nd Floor
Oklahoma City, Oklahoma

Sellers & Sellers
Attorneys at Law
202 Security Bank Building
P. O. Box 1404
Sapulpa, Oklahoma 74066

Mr. George Brown
Citizens Security Bank
109 North Armstrong
Bixby, Oklahoma 74008

/s/ W. Keith Rapp
W. Keith Rapp

Appendix L

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

NO. 48,634

IN RE: Application for Charter for THE BANK OF BIXBY, Bixby, Oklahoma, Case No. 72-1, Before the Banking Board.

L. C. NEEL, CURTIS G. HOLSTED, ROBERT H. HODGEN, ERNEST E. CROCKER and GAIL L. CARNES, Individually, and as Organizers of THE BANK OF BIXBY, (Proposed),

Appellees,

Vs.

THE BANKING BOARD OF THE STATE OF OKLAHOMA; CITIZENS SECURITY BANK, BIXBY, OKLAHOMA; RIVERSIDE NATIONAL BANK, JENKS, OKLAHOMA; ARKANSAS VALLEY STATE BANK, BROKEN ARROW, OKLAHOMA; and THE FIRST BANK OF HASKELL, OKLAHOMA,

Appellants.

MOTION TO VACATE

Come now the appellants hereinabove named and move this Honorable Court to vacate its Stay Order heretofore entered on the 9th day of February, 1976, for the reasons and upon the grounds as follows:

1. Appellants, after having completed exhaustive examination of the record in this case before the State Banking Board, the Court of Bank Review and the Su-

preme Court of this State, find that the pro forma statement filed in the record by appellees shows upon its face that should the bank in question be allowed to open, a financial loss would result over a period of years and for a time greater than would be required for appeal of this cause to the Supreme Court of the United States.

2. That because of the protracted period of loss set forth above that appellees admit they would suffer as a result of operation of said bank, appellants do not desire, nor do they see the necessity of, posting any form of indemnity or bond for the assurance of that admitted loss.

3. Although appellants feel that federal questions are present in the record of this case upon which a good faith appeal may be taken to the Supreme Court of the United States and upon which certiorari might be granted, appellants nonetheless conclude that the record does not reflect a clear-cut federal question which would assure the granting of certiorari by the Supreme Court of the United States.

4. Appellants at this time intend to pursue appeal to the Supreme Court of the United States upon the federal questions which they feel are suggested by the record in an attempt to gain certiorari, and even though appellees should no longer be restrained by this Court, they should be notified by copy of this pleading that should they proceed further, they do so at their own peril.

5. Counsel for appellants feel it is advisable at this time for reasons set forth above that the Order to Stay heretofore entered by this Court on the 9th day of February, 1976, be vacated to discourage bad faith litigation by appellees to pursue the assessment of non-existent damages as admitted by appellees' own pro forma statement, but for which appellants might have no adequate remedy.

WHEREFORE, appellants move that the Order to

Stay entered by this Court on February 9, 1976, be vacated for reasons set forth above.

SELLERS & SELLERS
Attorneys for Appellants.

/s/ W. C. Sellers
202 Security Bank Building
P. O. Box 1404
Sapulpa, Oklahoma 74066
(918) 224-5357

CERTIFICATE OF MAILING

The undersigned certifies that a true and correct copy of the above and foregoing Motion to Vacate was mailed on this 24th day of February, 1976, by depositing, postage prepaid, in the U. S. Mails, in sealed envelopes, to the following:

H. E. Leonard, Bank Commissioner
4100 Lincoln Blvd.
Malco Building - 2nd Floor
Oklahoma City, Oklahoma

Mr. W. Keith Rapp
Howard, Rapp & Gaskill
520 Center Building
630 West Seventh Street
Tulsa, Oklahoma 74127

Mr. George Brown
Citizens Security Bank
109 North Armstrong
Bixby, Oklahoma 74008

/s/ W. C. Sellers

SELLERS & SELLERS
Attorneys for Appellants
202 Security Bank Building
P. O. Box 1404
Sapulpa, Oklahoma 74066

Appendix M

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA
No. 48,634
IN RE: Application for Charter
for THE BANK OF BIXBY,
Bixby, Oklahoma, Case
No. 72-1, Before the
Banking Board.

L. C. NEEL, CURTIS G. HOLSTED,
ROBERT H. HODGEN, ERNEST E.
CROCKER and GAIL L. CARNES,
individually and as organizers
of THE BANK OF BIXBY (Proposed),
Appellees,
vs.
THE BANKING BOARD OF THE STATE
OF OKLAHOMA; CITIZENS SECURITY
BANK, Bixby, Oklahoma; RIVERSIDE
NATIONAL BANK, Jenks, Oklahoma;
ARKANSAS VALLEY STATE BANK,
Broken Arrow, Oklahoma; and
THE FIRST BANK OF HASKELL,
OKLAHOMA,
Appellants.

ORDER

Appellants are directed to respond to the appellees' motion for reconsideration of the order staying enforcement of mandate entered herein February 9, 1976. Response herein directed is to be filed no later than March 10, 1976.

DATED THIS 25th DAY OF FEBRUARY, 1976.

/s/ Ben T. Williams
Chief Justice

Appendix N

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA
No. 48,634
IN RE: Application for Charter for
THE BANK OF BIXBY, Bixby,
Oklahoma, Case No. 72-1
Before the Banking Board.

L. C. NEEL, CURTIS G. HOLSTED,
ROBERT H. HODGEN, ERNEST E.
CROCKER and GAIL L. CARNES,
Individually, and as Organizers of
THE BANK OF BIXBY, (Proposed),
Appellees,
vs.
THE BANKING BOARD OF THE STATE
OF OKLAHOMA; CITIZENS SECURITY
BANK, BIXBY, OKLAHOMA; RIVERSIDE
NATIONAL BANK, JENKS, OKLAHOMA;
ARKANSAS VALLEY STATE BANK,
BROKEN ARROW, OKLAHOMA; and
THE FIRST BANK OF HASKELL,
OKLAHOMA,
Appellants.

ORDER

Upon motion by appellants the order entered herein February 9, 1976 directing stay of enforcement is withdrawn and vacated and the mandate of this Court issued January 15, 1976 is reaffirmed as of the date of this order, and all time computations incident thereon shall be from and after the date of this order.

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE THIS 8th DAY OF MARCH, 1976.

/s/ Ben T. Williams
Chief Justice